

Rule 20, Ariz. R. Crim. P. – JUDGMENT OF ACQUITTAL

STATE’S RESPONSE TO DEFENDANT’S RENEWED MOTION FOR JUDGMENT OF ACQUITTAL

A defendant may renew his motion for judgment for acquittal within 10 days after the verdict is returned. A trial judge who denied the defense’s motion for judgment of acquittal may only consider a new motion if the court is satisfied that it previously erred in considering improper evidence.

The State of Arizona, by and through undersigned counsel, opposes the defendant’s motion for judgment of acquittal, for the reasons set forth in the following Memorandum.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS:

On September 11, 1997, two subjects entered All Valley Impound at 3401 S. 39th Avenue, Phoenix to inquire about a 1969 Chevrolet pickup truck. The cashier, Angelica Barron, advised the subjects that proof of ownership, payment, and photo identification was necessary to retrieve the vehicle.

The two men left the building and returned a short time later with the proof of ownership, a title to the vehicle in the name of “Kenneth Roach.” The larger of the two men, identified as Dennis Michael White, told Angelica that his associate was Kenny Roach and they wanted the truck back. However, White’s associate, a man subsequently identified by All Valley Impound Manager Michael Gannon as Joseph Deluca, did not have any identification. A promissory note, filled out at All Valley Impound by both Dennis Michael White and Joseph Deluca in the name of “Kenny Roach,” obligated Kenny Roach to pay All Valley Impound one hundred sixty dollars, the amount owing on the truck. Nowhere on the note did Joseph Deluca reveal his true identity.

The transaction also required photo identification of the vehicle owner. Without photo identification, cashier Angelica Barron needed to have her manager, Michael Gannon, approve the transaction. When Michael Gannon approached the two men at the front counter, Joseph Deluca represented himself as the car owner and said that he did not have any identification. After a brief discussion, and only with the approval of the manager, this unusual transaction was permitted to go forward without the required photo identification. However, because White had identification, the manager required White to sign the note and attest that the man with him – actually Joseph Deluca – was in fact Kenny Roach. White did not demand that All Valley Impound release the vehicle; he negotiated its release by signing the promissory note. White never claimed to be the true owner of the vehicle. Instead he identified Joseph Deluca, the man with him, as Kenny Roach, the owner of the truck.

The note was completed, and the transaction went forward. Angelica Barron then produced a release receipt and told the men to present the release receipt at the yard to have the vehicle physically returned to them. White signed the release receipt. Prior to his leaving the office, Dennis Michael White claimed he would make sure the bill was paid. All Valley Impound then released the 1969 Chevrolet pickup truck to the men. This transaction remained outstanding through the indictment issued on June 24, 1998.

II. LAW

A. Rule 20, Judgment of Acquittal:

A defendant who moved for a judgment of acquittal before the verdict may renew that motion “within 10 days after the verdict was returned.” Rule 20(b), Ariz. R. Crim. P. “There is no authority for the court, on its own motion, to enter a judgment of acquittal after

a jury verdict. The court's authority in post-verdict proceedings is strictly limited by the Rules of Criminal Procedure." *State ex rel. Hyder v. Superior Court*, 124 Ariz. 560, 561, 606 P.2d 411, 412 (1980).

If the trial court denied a defendant's original motion for directed verdict, the trial court may only consider a post-verdict motion for acquittal if the court is satisfied that it previously erred in considering improper evidence. *State v. Cannon*, 192 Ariz. 236, 238, 963 P.2d 315, 317 (App. 1998); *State v. Villarreal*, 136 Ariz. 485, 487, 666 P.2d 1094, 1096 (App. 1983). In *State ex rel. Hyder v. Superior Court*, 128 Ariz. 216, 624 P.2d 1264 (1981), the Arizona Supreme Court held that the trial court abused its discretion when the court gave no reasons for its findings of "no substantial evidence" in granting a post-verdict motion for judgment of acquittal:

At this point the judge may only re-determine the quantum of evidence if he is satisfied that he erred previously in considering improper evidence. To find that the evidence was sufficient before the jury got the case, but not after, can be justified only on the basis of a mistake of law on the part of the court and not fact on the part of the jury. If after verdict of guilt the trial judge grants a motion for acquittal but does not specify in his order the legal basis for his findings "no substantial evidence to warrant a conviction," 17 A.R.S. Rules of Criminal Procedure, Rule 20, we must assume on review that he has disagreed with the jury's fact-finding and is not now raising some previously undisclosed legal, rather factual, deficiency. Absent a change in position on prior evidentiary rulings by the trial judge, this is not proper.

Id. at 224, 624 P.2d at 1272.

In *State v. Paoletto*, 133 Ariz. 412, 652 P.2d 151 (App. 1982), the Court of Appeals addressed a trial court's obligation regarding granting an acquittal. In its findings, the *Paoletto* Court stated:

[T]he trial court has no duty to order an acquittal where there is substantial evidence that a defendant has committed the crime charged, and a directed verdict should not be granted if the evidence is such that reasonable minds

may differ on the inferences to be drawn therefrom. *State v. Mosely*, 119 Ariz. 393, 581 P.2d 238 (1978). “Substantial evidence” is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt. *State v. Jones*, 125 Ariz. 417, 610 P.2d 51 (1980). In a jury trial, the credibility of witnesses and weight to be given their testimony are to be determined by the jury and not by the judge. *State v. Hickie*, 129 Ariz. 330, 631 P.2d 112 (1981); *State v. Pieck*, 111, Ariz. 318, 529 P.2d 217 (1974).

Id. at 416, 652 P.2d at 156.

Here, the State has presented substantial evidence, as defined in *Paoletto, supra*, to support the jury’s guilty verdict. This Court should not order a judgment of acquittal notwithstanding the verdict. The *Paoletto* case grants deference to the jury, as the trier of fact, to make any determination of the weight of the evidence presented and the credibility of the witnesses.

B. Elements of Forgery:

The applicable statute, A.R.S. 13-2002(A)(3), Forgery; classification, provides:

A. A person commits forgery if, with intent to defraud, such person:

(3) Offers or presents, whether accepted or not, a forged instrument or one which contains false information.

A forgery occurs “when one either makes or passes a false instrument with intent to defraud. . . . It is immaterial to the offense of forgery whether any person has been actually injured.” *State v. Maxwell*, 95 Ariz. 396, 399, 391 P.2d 560, 562 (1964).

Criminal intent is often elusive and difficult to illustrate by specific acts. In *Gates v. United States*, 122 F.2d 571, 575 (10th Cir. 1941), the court stated:

“* * * fraudulent intent, as a mental element of crime, is often difficult to prove by direct evidence. In many cases it must be inferred from acts of the parties, and inferences may arise from a combination of acts, even though each act or instance, standing by itself, may seem unimportant.”

See also State v. Hoffman, 78 Ariz. 319, 324, 279 P.2d 898, 901 (1955).

The State is required to show that the defendant knowingly offered or presented a document that had been falsely made; and that the defendant knowingly presented it with the intent to defraud All Valley Impound.

The State's position has always been that Defendants White and Deluca were acting as accomplices. Regardless of whether Deluca or White actually handed the promissory note document to the cashier, to convict Deluca of forgery, the State must prove by substantial evidence that Deluca *knew* at the time it was presented that the document had been falsely made. The State is also required to show that, at the time the men presented the promissory note to the cashier, that defendant Joseph Deluca knew that White intended to defraud All Valley Impound and that Joseph Deluca helped fill out the form with the intent to promote or facilitate the commission of the offense.

Applying the "intent to defraud" element to these facts means that the codefendants, White and Deluca, intended to mislead another person for the purpose of gaining some material benefit, although as an accomplice Joseph Deluca need not personally receive the benefit.

The reasonable inferences that can be drawn from the evidence in support of defendant Deluca's knowledge include the following:

1. Joseph Deluca knew that proof of ownership, photo identification, and payment were required to obtain immediate possession of the truck from All Valley Impound, as Angelica Barron explained.
2. Joseph Deluca knew he was Joseph Deluca and not Kenneth Roach.
3. Joseph Deluca knew Dennis Michael White was not Kenny Roach.

4. Joseph Deluca knew that he, Joseph Deluca, was not the owner of the truck.
5. Joseph Deluca knew that by representing himself as the owner to Michael Gannon that the information he was offering was false information.
6. Joseph Deluca knew that White's statements that Deluca was the true owner of the truck were false statements.
7. Joseph Deluca knew that when he signed the note with someone else's name that he would be falsely representing the true ownership of the truck in writing.
8. Joseph Deluca knew that when White signed as a "witness" on the note that White was falsely attesting in writing that Joseph Deluca was Kenny Roach.
9. Joseph Deluca knew by signing a false name, Kenny Roach, he would be obligating Mr. Roach to pay the note.
10. Joseph Deluca knew by falsely representing himself as the owner, and by falsely signing the note obligating that name on the note to pay, that Dennis Michael White would obtain immediate possession of the truck.

The defendant claims that White accepted full responsibility for making the payment himself. However, this claim is inaccurate, as the record reveals. The defendant continually argues that White bound himself to pay the full amount due and owing on the note. However, the facts at trial showed that White signed the note only as a witness, because White had identification and he could falsely attest that Joseph Deluca was Kenny Roach, the true owner of the truck. In doing so, White placed in writing the fraudulent misrepresentations previously made to Angelica Baron that Joseph Deluca was Kenny Roach. In signing the promissory note as a "witness," White was not obligating himself to pay on the note – he was merely falsely attesting that Joseph Deluca was Kenny Roach. His signature is not in and of itself identifiable nor is the date next to the signature accurate. The All Valley Impound cashier, Angelica Barron, explained that Dennis White was not

originally going to sign anything at all. However, White then filled out the top portion of the note, then turned back to the cashier, saying, "I'm done." Ms. Barron explained to the men that the owner of the vehicle had to sign the promissory note and Dennis White had to sign as a witness because White was the one with identification. Dennis White therefore wrote the word "*witness*" on the promissory note and then signed it.

Likewise, the defendant's claim that Roach "could not be harmed or defrauded in any way by Defendant signing his name to permit the truck to be released," is inaccurate. The fact is that because the defendant and White signed the release form, they were able to remove Roach's vehicle from the impound lot without his knowledge or permission. White's signing the release form with an illegible signature, at most, merely obligated him to pay if "Kenny Roach" did not pay. The form that White signed was a standard release form. All Valley Impound required everyone who wanted to pick up a vehicle to fill out such a form. Angelica Barron had Dennis White sign the form because he was to be the person who would actually pick up the truck, not because White represented himself to be the owner of the truck. Throughout the transaction, White said that the defendant Deluca was Kenny Roach and that Kenny Roach owned the truck.

While Deluca was present, and with his participation, White and Deluca acted together to mislead both Angelica Barron and Michael Gannon to believe that Joseph Deluca was Kenny Roach, the owner of the truck. When Deluca signed the promissory note as Kenny Roach, he falsely made the instrument or one that contained false information. When White and Deluca presented the promissory note to cashier Angelica Barron, they did so with the intent to defraud, meaning that they intended to mislead Michael Gannon and Angelica Barron for the purpose of gaining immediate release of the truck.

White's statements were unquestionably false. White did not represent himself as the owner of the truck; instead, he repeatedly and falsely represented that the person before them was Kenny Roach and that Kenny Roach was the owner.

All Valley Impound's manager, Michael Gannon, testified that if a vehicle's owner demanded that his vehicle be returned, Mr. Gannon was obligated to return the vehicle to the owner. However, neither Mr. Gannon nor Ms. Barron ever discussed that fact, either with Deluca or with White. Nor did White ever demand that the truck be immediately released or otherwise indicate that he was aware that he could do so.

Instead, the defendant Deluca identified himself as Kenny Roach, the vehicle's owner, knowing that this was false. Deluca never demanded that All Valley Impound return the vehicle to him as the owner. Instead, Deluca falsely represented himself orally to Michael Gannon as the owner of the vehicle, Kenny Roach, and falsely signed the promise to pay using Kenny Roach's name. By doing so, he did not obligate White to pay on the note.

At the very time he falsely identified himself as the owner and signed the note with that false name, Deluca demonstrated the "intent to defraud." The facts show his intent was to mislead another person for the purpose of gaining some material benefit to White – namely, his immediate possession of the truck. At that moment, the offense of forgery was completed. Any subsequent representations by White that he would pay, the signing of the release form, or even payment made on the note later, does not affect what Deluca's intent was at the time he filled out and signed the note. And because White made so many false statements in the course of the transaction, even if White did say that he would pay the note, such assurances to pay could hardly be considered sincere.

C. The State has proven that White committed forgery:

The defendant Deluca argues that the State has not proven that White committed Forgery, and concludes that if White did not commit forgery, the defendant could not have been his accomplice. The State contends that the facts at trial showed that White signed the promissory note only as a witness, because White had identification and White would falsely attest that Deluca was the true owner of the truck. In doing so, White placed in writing the fraudulent misrepresentations, previously made orally to Angelica Baron, that Joseph Deluca was Kenny Roach, the truck's owner. In signing as a "witness," White was not obligating himself to pay on the note. White was merely falsely attesting that Deluca was Kenny Roach. Both White and Deluca offered All Valley Impound a forged instrument. Thus, Deluca was White's accomplice in this act.

III. Conclusion:

On September 11, 1997, Joseph Deluca entered All Valley Impound, falsely identified himself as Kenny Roach, falsely identified himself as the owner of the 1969 Chevrolet pickup truck, falsely signed the promissory note using the name of Kenny Roach, and did so with the intent to mislead All Valley Impound's staff members, Michael Gannon and Angelica Barron, so that Dennis Michael White could gain immediate possession of the truck. In doing so, Deluca committed forgery and the evidence presented at trial is substantial in this regard. Therefore, the State asks this Court to deny defendant Deluca's renewed motion for judgment of acquittal.